

**UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT**

**AGPMR ADVISORY
No. 15-06**

Issued: September 2, 2015

Title: Acceptance of Free Space

1. SUMMARY

This Advisory provides guidance for U.S. Department of Agriculture (USDA) agencies and offices to accept non-federal free space, meaning USDA makes no rent or service/utility payments to the private sector or non-federal government facility owner. The guidance is applicable to two situations: a delegated real property lease contract; another type of occupancy agreement, for example a cooperative agreement with a local government.

2. BACKGROUND

USDA's preference is to occupy space, free or otherwise, under the auspices of a formal lease contract. A lease best protects the government's interests and rights, including compliance with physical accessibility, security, and against eviction. However, USDA often occupies space in local and state government facilities, such as county offices and public universities, and documents these arrangements with a less formal, limited type of agreement. Such space is often provided free of charge. This Advisory clarifies the circumstances under which free space may be solicited or accepted, and advises when USDA's gift acceptance policy, outlined in Departmental Regulation 5200-3 (DR-5200-3), applies.

3. POLICY

The following policy is to be implemented in free space occupancy situations:

- a. **Leases**. Free space may not be solicited; however, an offer of free space may be considered in response to a Request for Lease Proposals (RLP), provided the space meets the requirements of the RLP – and only when the free space is in excess to the square footage solicited. Free space might be offered in addition to the solicited amount, for example, if a Lessor has a contiguous block of space available that is otherwise non-marketable. Otherwise, an agency may only accept an offer of completely free space, e.g. the free space equals the total solicited square footage amount, when the space that is offered complies with gift acceptance rules in DR 5200-3.
- b. **Other Agreements**. Free space that is offered to USDA pursuant to a non-lease, such as a cooperative agreement with a public university or a local government, must be reviewed prior to acceptance pursuant to DR 5200-3. DR 5200-3 requires the agency to conduct prohibited source analysis. Even if the entity offering the space is considered a prohibited source, the gift might still be acceptable if the free space is “incidental to [the entity’s] cooperation in carrying out a federal program.” (DR 5200-3 para. 6(c)).
- c. **Judicious Acceptance of Free Space**. USDA has statutory gift acceptance authority (7 USC 2269). However, agencies must not engage in the widespread use of the gift acceptance authority to obtain things which would normally be procured through the contracting process, such as leased office space. Agencies must also limit use of the authority to avoid augmenting their appropriations. It is possible that Congress would act to revoke or limit the gift acceptance authority because of perceived misuse or overuse. Finally, accepting free space as a regular practice is not recommended because it may appear to give outsiders undue influence over USDA’s decision making process about where to locate its offices.

For these reasons, OPPM cautions agencies to be judicious in the use of gift acceptance authority. Should you require additional information about this guidance or regarding specific cases of accepting free rent, feel free to consult the Office of the General Counsel or the Office of Procurement and Property Management’s (OPPM) Property Management Division (PMD).

- d. **Maintain accurate and complete records**. DR 5200-03 requires the free space to be properly reported for financial accounting purposes. In all instances where USDA occupies space under a real property lease or another type of agreement, it must be recorded in USDA’s “Corporate Property Automated Information System” (CPAIS).

4. QUESTIONS

Please direct any questions regarding this Advisory to Brenda Woodley, Realty Specialist, by phone on (202) 720-4555, or email at Brenda.Woodley@dm.usda.gov.

EXPIRATION DATE: Until canceled.



Paul Walden, Chief, PMD

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